MAGISTRATE'S APPEAL.

K. A. Seth (*C. H. Koh* with him) for the appellant.

J. F. McWilliam (Crown Counsel) for the respondent.

Cur. Adv. Vult.

Murray-Aynsley C.J. : —This appeal relates to proceedings under Part II of the Fugitive Offenders Act, 1881. Various technical objections were taken to the order made by the learned Magistrate. Whether the order is one which the Magistrate could make seems doubtful. The point was taken in the Memorandum of Appeal but not argued. The main argument dealt with the Straits Settlements and Protected States Fugitive Offenders Order in Council, 1916. As this is a law in force in the Colony I think that the Magistrate was obliged to take judicial notice of it. As the Federation of Malaya Order in Council, 1948, does not have force of law in the Colony I do not think the Magistrate was able to take judicial notice of it.

It further appears the warrant was not properly authenticated. By the principal Act, section 24, the warrant must be authenticated in various ways, including the seal of the Governor. By the Order in Council of 1916 the "Governor" means the officer for the time being exercising the functions, as regards the F.M.S., of the British Resident of the State in, or on his way to, which the fugitive is or is suspected of being.

Here the warrant is authenticated by the seal of the British Adviser, Pahang. Assuming that for the purpose of the Act and the Order in Council the British Adviser represents the British Resident, it does not appear that the British Resident in Pahang could ever authenticate a warrant in these cases. For these reasons the order of the learned Magistrate must be discharged.

There is a very difficult question as to how far, if at all, the Order in Council still applies to the Federation of Malaya in relation to the Colony of Singapore but I have not gone into that.

Appeal allowed.

Solicitors: *C. H. Koh & Co.*

Re LEE YOKE KENG & ORS.

[O. Cr. J. (Mathew C.J.) January 22, 1955]

[K. L.—Criminal Trial No. 41 of 1954]

Penal Code, s. 373A—Buying a female for the purpose of prostitution—Action of police officer to detect offence.

The accused in this case were charged under s. 373A of the Penal Code with buying a female for the purpose of prostitution. It appeared that on receipt of certain information Mr. Clough the officer-in-charge of 'B' Division, Kuala Lumpur arranged that a girl Chan Fong Sai should be produced by the witness who had given the information as a girl who was willing to be sold as a prostitute. As a result the accused were arrested after they had paid a sum of money for the purchase of the girl. It was argued for the accused, *inter alia:* (1) there could be no sale of the girl by herself; (2) the action of the Police Officer in this case was improper.

Held: (1) a woman can sell herself into prostitution and as in this case an attempted buying was proved, the accused were guilty of the charge brought against them; (2) the Police Officer did not behave improperly in this case as if he had not acted as he did a gang of traffickers in women would never have been prosecuted.

Case referred to:—

(1) *Brannan v. Peek* (1947) 2 All E.R. 572, 573.

CRIMINAL TRIAL.

E. Brown (Federal Counsel) for the prosecution.

P. Hall for the accused.

Mathew C.J. : —The accused in this case are charged with buying a female, Chan Fong Sai, for the purpose of prostitution, contrary to section 373A Penal Code.

The fifth accused approached P.W. 1, who was her lodger, and asked her to find a girl without parents who could be sold as a prostitute. P.W. 1 agreed to try, and some days later reported what had occurred to one of her acquaintances P.W. 2, who was a female searcher employed in Campbell Road Police Station, Kuala Lumpur. Very sensibly, P.W. 2 took P.W. 1 to Mr. Clough, Officer-in-charge 'B' Division, whose office was in Campbell Road Police Station. Mr. Clough, in my view, properly considered that the complaint should be followed up and arranged that P.W. 2 should be produced by P.W. 1 as a girl who was willing to be sold as a prostitute.

They (P.Ws. 1 and 2) went out together and contacted the fifth accused, who was joined by accused Nos. 1 and 2; later they were joined by accused 3 and 4. The coffee shop to which they had repaired was considered to be too public a place, and they moved to Tai Eng Hotel, where they continued their conversation in a back room. The sum of $1,000 was agreed to be paid, and P.W. 2 received $50 on account, the balance of $950 to be paid on the following Monday. P.Ws. 1 and 2 then reported to Mr. Clough.

On Monday Mr. Clough obtained a Cadet Social Welfare Assistant, P.W. 3, from Miss Rickword, the head of the Children's Section of the Social Welfare Department, who was detailed to accompany P.Ws. 1 and 2 on this final interview. She accounted for her presence by saying that she too was willing to be sold as a prostitute. The balance of $950 was then handed

over, and $500 was paid by the first accused to the fifth accused. Police were watching the hotel, and accused 1, 2, 3 and 4 were arrested; No. 5 was arrested later in the evening.

The evidence of P.Ws. 1, 2 and 3 was not seriously challenged by the defence, who rested on a submission that no case had been made out for them to answer. I may say at once that I accept the evidence of P.W. 3 without hesitation. She is a person of unimpeachable character and is no more than a police informer whose evidence does not require corroboration. It is impossible for me to regard the story of the prosecution as other than proved beyond all reasonable doubt.

Mr. Hall, for the defence, has submitted that, even accepting all the evidence, no offence has been proved. All the accused were kindly people, anxious for the welfare of P.W. 2, who though keen to employ her as a prostitute in Singapore, did not wish her to accept without first letting her know the advantages and disadvantages of the life of a prostitute. They were anxious that P.W. 2's mother should be provided for. It was, in Mr. Hall's submission, nothing more than a contract of service.

His second submission was that there could be no sale without a third party; there was no offence unless P.W. 2 was sold by another party; she could not sell herself. He cited a number of Indian cases and *Gour on Penal Law in India* which deal with the section corresponding to section 373A in our Code. As always, there is a divergence of view between the respective High Courts in India.

In my view, a woman can sell herself into prostitution, and in this case an attempted buying was proved beyond all reasonable doubt. The first accused bought and the other accused aided and abetted. I accordingly convicted all accused.

As regards sentence, the first and the fifth accused played the major role in this trafficking in women, and the 2nd, 3rd and 4th accused minor roles. Sentences of 4 years, 3 years and 6 months, if anything, erred on the side of leniency.

There is one further point. I entirely disagree with Mr. Hall's submission that Mr. Clough, A.S.P., behaved improperly. The comments of the Lord Chief Justice in *Brannan v. Peek*[1], are not appropriate for application in this case. Had Mr. Clough not acted as he did, a gang of traffickers in women would never have been prosecuted. No exception can be taken to what he did and, indeed, he is deserving of commendation for his skilful handling of this case.

Accused convicted.

Solicitors for the accused: *Shearn, Delamore & Co.*

HARWOOD & ANOR. v. PERREAU (w)

[O. C. J. (Murray-Aynsley C.J.) March 17, 1955]
[Singapore — Suits Nos. 1362 & 1363 of 1954]

Landlord and Tenant — Control of Rent Ordinance — Meaning of premises — Claim to apportion rent of part of house let to plaintiff.

These were two actions brought by the former tenants against a landlord. The defendant was the owner of a house of which the standard rent in 1939 was $100. After the war the premises were let separately as two dwellings — one part for $300 p.m. to the plaintiff in Suit No. 1362 of 1954; and the other for $350 to the plaintiff in Suit No. 1363 of 1954.

It was contended on behalf of the plaintiffs that the Court should apportion the standard rent between the two parts of the house and that the difference between what they had paid and the apportioned part of the standard rent should be refunded to them.

Held: after the subdivision each part of the house became premises for which the standard rent was the rent at which they were first let.

Cases referred to:—

(1) *Vaughan v. Shaw* (1945) 1 K.B. 400.

(2) *Tan Ah Seah v. Teo Kai Mui* (1954) M.L.J. 50.

N. A. Christopher for the plaintiffs.

R. S. Boswell for the defendant.

Murray-Aynsley C.J.: — These are two actions by former tenants against a landlord. The defendant is the owner of a house of which the standard rent in 1939 was $100 p.m.

After the war the premises were let separately as two dwellings. One part was let to the plaintiff in Suit No. 1362 of 1954 from 1st June 1953 at $300 p.m.; the other to the plaintiff in Suit No. 1363 of 1954 at $350 p.m.

The contention of the plaintiffs is that the Courts should apportion the standard rent between the two parts of the house and they seek in each case to recover the difference between such part of the standard rent (plus adjustments) and what they have actually paid. I think this is misconceived. Having regard to the definitions of "premises" and "tenancy" in both Ordinances it appears to me that after the subdivision each part became "premises" for which the standard rent was the rent at which they were first let. (See *Vaughan v. Shaw*[1], the converse of the present case. See also *Tan Ah Seah v. Teo Kai Mui*[2]). We do not know what that was but there is no evidence that it was less than the rate paid by the plaintiffs.

In the circumstances there must be judgment for the defendant in each case on the claim, and in Suit No. 1362 of 1954 on the counterclaim, with costs in each case.

Judgment for the defendant.

Solicitors: *Christopher & Francis; R. C. H. Lim & Co.*